



JOSEPH R. BIDEN, III
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

PHONE (302) 577-8338
FAX (302) 577-2601

ADVANCE HEALTH CARE DIRECTIVES

WHAT IS AN ADVANCE DIRECTIVE?

An Advance Care Directive, also called a Living Will, is a legal document you prepare to make known your wishes concerning certain medical care and treatment. Every adult has the right to make his or her own decisions about health care and medical treatment. Your Advance Directive becomes effective if you are no longer capable of expressing your wishes because you physically cannot communicate or are not mentally competent. This document will speak for you if you can no longer speak for yourself. If you chose to do so, you can also name someone else to make decisions for you. The person you name is called your agent.

WHAT HAPPENS IF I DO NOT HAVE AN ADVANCE DIRECTIVE?

If you have not made your wishes known or appointed an agent to make decisions for you through an advance directive, your closest relative will be asked to make those decisions for you. Delaware law provides that your spouse, adult child, parent, adult sibling, adult grandchild, adult niece or nephew or a guardian appointed by the Court of Chancery will make decisions about your care in that order.

WHAT SHOULD I DO TO PREPARE MY ADVANCE DIRECTIVE?

Go to the website of Attorney General Carl C. Danberg at www.state.de.us/attgen, click on "Living Wills and Advance Health Care Directives Form" and print out the form. The Advance Directive Form was prepared by the Committee on Law and the Elderly of the Delaware Bar Association and approved by the Office of the Delaware Attorney General. You may also want to look at the Health-Care Decisions Statute found at Chapter 25 of Title 16 of the Delaware Code.

Carefully read the information and instructions on the form which will help you think about the medical care and treatment you want. You may want to consult with your doctor, lawyer, clergyperson, family members or friends. If you want to appoint an agent to make decisions for you, talk to him or her about your decision. Talking about these issues may be difficult but it will help you and your agent to clarify your wishes.

HOW DO I COMPLETE THE FORM?

After you have decided on the care and treatment you want, you can begin to complete the form. Make at least two copies of the form so that you can do a rough draft and then fill out the final form. The instructions will lead you through the process step by step. You can cross out words or add your own words anywhere you wish on the form. Initial all additions and cross outs. Here is brief summary of each part of the form:

Part I. In this section, you will indicate whether you want your life to be prolonged as long as possible or if you want certain treatment or care to be stopped if you have an incurable condition or if you are in a persistent vegetative state or irreversible coma. “Artificial nutrition through a conduit” generally means food that passes through a tube. “Hydration through a conduit” generally means water or other liquids that pass through a tube. Check off what you want or do not want. You can always cross out words or add your own words to explain your wishes. Initial all additions and cross outs.

Part II. In this section you can name an agent to make decisions for you. Here again, you can cross out words or add words to make your wishes clear. Initial all additions and cross outs. If you want to name an agent, you may also want to name an alternate in case that person can not serve for you. You can also be specific as to what authority you chose to give your agent and when that authority becomes effective.

Part III. In this section, if you chose to do so, you can express your wish allowing your body or certain organs to be used for transplants, medical education or research.

The last part of the form is where you and your witnesses sign the form to make it official. Carefully read the instructions as to the limitations on who may be a witness to your Advance Directive. Please remember that your Directive will not be effective unless you sign it and unless your witnesses meet all of the requirements listed on the form. Finally, you can have the document notarized but that is not necessary under the law. Copies of your Advance Directive are as effective as the original.

WHAT SHOULD I DO WITH MY COMPLETED ADVANCE DIRECTIVE?

Place your original and a copy with your important papers. Consider giving one or two copies to your agent and to a trusted family member or friend. Ask your primary care doctor if he or she would like a copy. If you are being admitted to a hospital or nursing home, be sure to have a copy with you to be placed in your medical file.